Petition not printed

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1952.

No. 494.

In the Matter

of

MINNIOLA O. MILLER,

In Bankruptcy.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF OF TOWN OF SUFFIELD, CONNECTICUT, IN OPPOSITION.

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OTHER AUTHORITIES CITED:

Federal Rules of Civil Procedure, Rule 73 (a) 7

Revised Rules of the Supreme Court of the United States, Rule 38 (2), (5) 7

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I.

Opinions Below.

The opinion of the District Court is reported in 106 F. Supp. 40, and the opinion of the United States Court of Appeals for the Second Circuit is reported in 198 F. (2d) 267.

II.

Statement.

On November 19, 1941 the petitioner filed a petition under the farmer debtor provisions of the Bank-

ruptcy Act which was subsequently dismissed. On December 12, 1942 the petitioner filed a second petition under the Act which was ordered dismissed on May 16, 1946 on the ground that petitioner was not a farmer within the meaning of the Act. This decision was appealed to the Court of Appeals, and after a number of extensions of time in which to perfect the record on appeal, this appeal was dismissed with costs pursuant to mandate dated October 2, 1947. A petition for re-hearing was denied on October 24, 1947. A petition for certiorari was denied by the Supreme Court of the United States on May 17, 1948, and motion for re-hearing was denied by the Supreme Court of the United States on June 14, 1948 (334 U. S. 820, 854). A third petition was filed on June 22, 1948. On February 9, 1950 the District Court found the petitioner to be a farmer and ordered her to proceed forthwith with a plan. On March 16, 1951 the District Court dismissed the petition on the grounds that the petitioner's proposed "plan" did not have the required consents of creditors, that in fact it was no plan, and that the petitioner had failed to use due diligence to rehabilitate herself. The petitioner appealed to the United States Court of Appeals for the Second Circuit which affirmed the action of the District Court. During the intervals between the above cited dates there have been numberless motions and petitions largely irrelevant, and the petitioner has never at any time made any genuine effort to rehabilitate herself.

III.

Summary of Argument.

The petitioner has at no time produced anything which would contravene the decision of the District Court that she did not have sufficient consents to her purported plan, that the "plan" was in fact not a plan, and that there was lack of diligence on the part of the petitioner.

IV.

Argument.

The District Court has stated that sufficient consents were not received to her purported plan. Nothing appears anywhere which would indicate that this was not the fact.

The court further stated that in any event the proposed plan "is no plan" and that it provides no method or time schedule for liquidation of the existing indebtedness. Petitioner produces nothing to contradict this statement.

The court further indicates that the lack of diligence and the resulting delay to creditors require the dismissal of the petition. The court recites the steps followed by this tortuous matter since 1941.

The court states:

> "It is now more than nine years since any payment of taxes or mortgage interest on petitioner's Connecticut properties."

and further states:

> "In the absence of a feasible plan, however, and reasonable diligence in forming and proposing one, the Act cannot be used as an indefinite postponement of all obligations of a farmer" (*Re: Miller,* 106 F. Supp. 40).

The latter statements indicate the position of the Town of Suffield. Other citizens of the town must pay the more if a taxpayer is to go free of taxes for an indefinite period. The petitioner has received tremendous indulgence, being a layman. The record plainly shows she has abused that courtesy to an inordinate degree. The very record itself discloses, far more eloquently than words could do, that the lack of diligence is a calculated plan to avoid her obligations.

The petitioner's brief is characteristically replete with scurrilous, defamatory and utterly untrue attacks upon the District Court Judge, upon all counsel who have ever had anything to do with the litigation, the several Conciliation Commissioners and others. The District Court has, on various occasions, pointed out the scurrilous nature of these statements.

The District Court in a decision dated February 9, 1950, as on file, found in favor of the petitioner to the effect that she was a farmer and directed her to proceed forthwith with a meeting of creditors and the formulation of a plan. In that decision the court stated:

> "It is now more than eight years since the first petition. Petitioner has represented herself since the dismissal of the first petition. She has fre-

quently sought and obtained continuances before this court, the several Commissioners, and before the Court of Appeals. She has, without foundation, accused counsel for the creditors, for herself, and practically all others concerned in the various phases of her litigation, of conspiracy to despoil her of her property.

* * * *

"If the petitioner is to have the benefit of the Act in spite of her past delays, and digressions to slandering her opponents and others, she should be held to a reasonably diligent prosecution of her action and be required to account for the assets of the estate in her hands."

This decision in her favor gave the petitioner the opportunity to avail herself of the benefits of the law in spite of her past actions if, in good faith, she intended to try to rehabilitate herself. Not only did she fail to do this but also she continued to delay and harass her creditors, curiously enough accusing them of putting her through a long course of litigation. It was she who brought this petition and its predecessors. As the court pointed out in its memorandum of March 16, 1951:

"In any case, the pending petition was brought by the petitioner herself, she was found to be a farmer by the Court over the vigorous objection of those of her creditors whom she accuses, and she has utterly failed to take diligent action to use the processes of the Act for her rehabilitation as a farmer."

V.

Conclusion.

By reason of the premeditated delaying technique which has been employed by this petitioner taxes justly owing to the Town of Suffield over more than ten years have remained, and still remain, wholly unpaid. The rights of other creditors have been similarly forestalled. The only interest of the Town of Suffield in these proceedings is, and at all times has been, to secure the payment of the taxes which are properly owed to it by this landowner.

The record of this case presents the picture of an individual litigant appearing *pro se* who has to an unprecedented extent been indulged by court and counsel in order that she might not be prejudiced by her failure and refusal to employ an attorney. She has unconscionably squeezed every advantage from her status as a layman in the courts, persistently abusing the processes of the law in order to retain her property without meeting her obligations. She has been guilty of the grossest improprieties which would not be tolerated of any attorney. She has constantly and deliberately defamed parties and counsel and even the District Court. To further answer the characteristic and grossly libelous and untrue statements contained in the present motion and petition would be to accord them unwarranted dignity.

It is respectfully submitted that neither the present petition nor the record in this case even remotely

suggests that there is any proper ground upon which certiorari might be granted.

Federal Rules of Civil Procedure, Rule 73 (a); Revised Rules of the Supreme Court of the United States, Rule 38 (2), (5).

Respectfully submitted,

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